

## **REMARKS/ARGUMENTS**

### **Status of Claims**

Claims 1-3, 6-8, and 10-17 were pending in the present invention. These Claims have been rejected under various rejections. As outlined above, Claim 17 has been amended. Therefore, Claims 1-3, 6-8, and 10-17 are pending in this application. The amended claim is fully supported throughout the specification as originally filed, including original Claim 1.

### **Rejections**

Claims 1-3, 10-11 and 13-14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Suda et al., US Pat. No. 5,078,710 (hereinafter "Suda") in view of Langdon et al., US 5,500,270 ("Langdon"). Applicants respectfully traverse this rejection.

The present invention, as exemplified in independent Claim 1 relates to a two layer structure which comprises a fluid permeable first apertured film layer and a fluid permeable second apertured film layer in fluid communication with said first layer. The second layer comprises a substantially planar first surface, a second surface, a caliper defined by a first plane and a second plane, and a first plurality of disconnected macrofeatures having a maximum dimension of at least about 0.15mm extending from the substantially planar first surface. The second layer further comprises a plurality of apertures defined by aperture sidewalls, originating in the first surface and extending generally in the direction of the second surface and terminating in the second plane. The aperture sidewalls are spaced apart from said first layer. The first layer contacts said substantially planar surface of said second layer at selected areas located between said macrofeatures.

Suda purports to disclose a surface material for sanitary articles. Col. 6, line 44. The surface material comprises a film and a layer of fibrous aggregates, lined on the film. Col. 2, lines 24-26. The film has wall sections that have slanting portions. Col. 3, lines 17-19 and FIG. 1. At least a part of the slanting portion is provided with an opening. Col. 3, lines 18-20 and FIG. 1. The opening may be formed over a slanted part of a wall section. Col. 4, lines 66-68.

Applicants interpret the Examiner's position to be that, according to Suda, a (second, body side) layer of nonwoven fibers can be deposited on the surface of a (first) layer which comprises apertures. Paper Mailed 9/19/2008, page 2. Applicants further interpret the

Examiner's position to be that in this embodiment, the "apertures in the sidewalls" are separate from the second layer.

Firstly, Applicants do not agree with the Examiner's assertion that Suda teaches "apertures in the sidewalls" that are spaced apart from the second layer (see Suda FIGs. 22-23 in which layers 5 and 6 are in intimate contact). Secondly, it is Applicants' position that even if Suda did teach this spacing, Suda still would not teach a two layer structure in which the first layer and said second layer contact one another at selected areas between the macrofeatures. Rather, in the construction that the Examiner appears to describe, the second, body side, nonwoven layer would contact the surface opposite Suda's wall sections. In other words, the nonwoven layer would contact the first layer across along the entire top section 1 of the first layer (see Suda, FIG. 1, and col. 3, lines 12-16), not at selected areas between any disconnected macrofeatures.

Langdon purports to disclose a capillary laminate material comprising at least two sheets. Col. 2, lines 45-47. A capillary zone between the sheets is established by a spacer element. Col. 2, lines 47-48. The spacer elements can be formed from a material which is added to the sheets or from one of the sheets themselves. Col. 3 lines 42-44.

In making the rejection, the Examiner relies upon Suda for its alleged teachings of macrofeatures and apertures as described above. The Examiner further relies upon Langdon to provide teaching of films as both first and second layer. However, like Suda, Langdon also does not teach contact between two layers at selected areas between disconnected macrofeatures (see Langdon FIGs 3-10). Applicants further submit that there are no suggestions in either of these references to modify the layers to provide such contact. Reconsideration is respectfully requested.

Claims 6-8, 12, and 15-16 stand rejected under 35 U.S.C. 102(b) as being unpatentable over Suda. Applicants respectfully traverse this rejection.

As well settled, anticipation requires "identity of invention." Each and every element recited in a claim must be found in a single prior art reference and arranged as in the claim. Furthermore, there must be no difference between what is claimed and what is disclosed in the applied reference. Moreover, it is incumbent upon the Examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference. In the present case, the Office Action has failed to exhibit this.

Suda is described above. In making the rejection, the Examiner again appears to rely upon Suda's body-contacting (second) nonwoven deposited on a (first) film layer. However, according to Suda the nonwoven and the film are integrated with one another (see Suda col. 5, lines 48-54 and FIGs 22-23). As discussed above, Applicants do not how this embodiment teaches *either* (1) apertures spaced apart from the second layer or (2) contact between two layers at selected areas between disconnected macrofeatures, let alone *both* of these limitations. Reconsideration is respectfully requested.

The Examiner has provisionally rejected claims 1-3, 6-8, 10-16 and 17 of the instant application in light of claims 1, 3-4, 10-11, 14-16, 18-19, 22-27, and 29-31 of co-pending patent application 10/366,051. While Applicants do not necessarily agree with the Examiner's rejections in any regard, nevertheless, because such provisional rejections are the only rejections remaining in view of the above-mentioned amendment and remarks herein, Applicants submit such rejections should be withdrawn pursuant to MPEP 804(I)(B), and the instant claims allowed. Should any of the above application issue into a patent prior to allowance of the instant application, the Examiner is requested to contact the undersigned to allow Applicants to consider filing a Terminal Disclaimer, or otherwise overcome any resulting non-provisional double patenting rejection.

Claims 1-3, 6-8, 10-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Langdon. Applicants respectfully traverse this rejection. Langdon is described above, The examiner appears to argue that Langdon differs from the claimed invention in that Langdon does not disclose the size and pattern of macrofeatures (Paper Mailed 9/19/2008, page 7). However, the Examiner has not pointed out any teachings or suggestions in Langdon to provide a two layer structure in which the first layer and said second layer contact one another at selected areas between macrofeatures. Applicants submit that Langdon, in contrast teaches spacer elements used to separate and secure sheets of a capillary laminate material (see Langdon at col. 3, lines 29-31 and FIGs 3-10. Furthermore, Langdon provides no teachings or suggestions to modify the laminate to provide contact one another at selected areas between macrofeatures.

Similarly, Applicants point out that for independent Claim 17, the Examiner has failed to indicate any teachings or suggestions in Langdon that relate to a two layer structure in which a first layer contacts a second layer within lower regions. Reconsideration of this rejection is respectfully requested.

Applicants believe that the foregoing presents a full and complete response to the outstanding Office Action. Applicants look forward to an early notice of allowance for this application.

Respectfully submitted,

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January 14, 2009